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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 523

HENRY S. MORGAN, ET AL.,
Petitioners,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in this case on July 5, 1962.

Opinions Below

The opinion of the Court of Appeals for the District of Columbia Circuit, dated July 5, 1962, is not yet reported and is printed in the Appendix, *infra* p. 13. The district court did not write an opinion; its findings of fact, conclusions of law and judgment appear at R. 748-753.*

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* "R" references in this petition are to the transcript of the proceedings including the Joint Appendix below.

Jurisdiction

The judgment of the Court of Appeals was entered on July 5, 1962 (R. 806), and a timely petition for rehearing was denied without opinion on September 12, 1962 (R. 811). By order dated September 26, 1962, the court below stayed issuance of its opinion and a certified copy of the judgment to and including October 15, 1962, pending the filing of this petition. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

Question Presented

Where, for purposes of leasing mineral land, Congress has distinguished between public lands and acquired lands of the United States by directing the Secretary of the Interior to grant mineral leases of acquired lands only with the consent of the head of the department or agency having primary jurisdiction over the lands and only under such conditions as that official may prescribe to insure their proper and adequate utilization:

> Whether, the Secretary of the Interior, without the consent of the Secretary of the Army, lawfully may lease as public lands, and not as acquired lands, the accretion to lands purchased by the United States in 1903 for river and flood control purposes with title approved by the Attorney General, and ever since that time continuously held for the same purposes under the jurisdiction and administration of the Department of the Army?

Statute Involved

Pertinent portions of the Mineral Leasing Act for Acquired Lands of August 7, 1947, c. 513, 61 Stat. 913 (30 U.S.C. 351, *et seq.*) read as follows:

> Sec. 2 (30 U.S.C. 351) "As used in this chapter * * * 'Acquired lands' or 'lands acquired by the United States' include all lands heretofore or hereafter acquired by the United States to which the 'mineral leasing laws' have not been extended, * * *."
>
> Sec. 3 (30 U.S.C. 352) "* * * all deposits of * * * oil, * * * gas, * * * which are owned or may hereafter be acquired by the United States * * * [exceptions not material here] may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof. * * * No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit, or holding a mortgage or deed of trust secured by such lands which is unsatisfied of record, and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered: * * *."

Statement of the Case

This is a suit for judical review of the action of the Secretary of the Interior in refusing petitioners Morgan or Strom,[1] and in issuing to respondent Wallis,[2] an oil and gas lease covering 826.87 acres of land located in the Mississippi delta area of Louisiana. The land is accretion to a tract purchased by the Federal Government in 1903 from one Jurgens, with title approved by the Attorney General of the United States, and since that date consistently has been administered as acquired land under the jurisdiction of the Department of the Army. (R. 465-478, 481-519.) Although initially stemming from a private controversy among three lease offerors, the case actually presents the basic public issue of whether property so obtained and held by the United States is leasable for mineral purposes as acquired land or as public land.[3]

The controlling statutes confer the lease on the person first making application who is qualified. Petitioner Morgan was the first to file. On January 27, 1954, he submitted two lease offers—each containing identical land descriptions embracing the tract in suit and other parcels—one on the Interior Department's acquired lands form and the other on the Department's public lands form.[4] Four

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[1] Petitioners The California Company and Shell Oil Company hold under options to purchase Morgan's and Strom's interests. Morgan and Strom have agreed to share the benefits under their lease offers (R. 748-9, Fdg. 2).

[2] Respondents McKenna and Nakasian claim under Wallis for services rendered to him (R. 749, Fdg. 2).

[3] Public land is leasable under the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, *et seq.*). Acquired land, that is purchased land, is leasable under the Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351, *et seq.*). *Barash* v. *Seaton*, 103 U.S. App. D.C. 159, 160, 256 F. 2d 714, 715 (1958).

[4] Morgan made dual filings because under the administrative rulings an applicant at his peril must select the proper application form. These rulings hold that a lease offer is void if the form is for public land and

months later, on June 2, 1954, Wallis top filed with five acquired land offers covering 826.31 acres of the same land that had been embraced in Morgan's offers (R. 749, Fdg. 3).

In due course, the Land Office proceeded to process Morgan's acquired land offer. On February 2, 1955, Wallis protested against favorable action on Morgan's application, and on April 26, 1955, the Land Office rejected the protest. Shortly thereafter, Wallis appealed this decision to the Director of the Bureau of Land Management (R. 750, Fdg. 3). On March 8, 1956, when his appeal on the acquired lands offer had been pending about a year, Wallis also filed a new lease offer covering the subject tract on a public lands form (*Ibid.*). At about the same time (March 26, 1956), Wallis filed a protest against allowance of Morgan's two-year old public land offer (R. 750, Fdg. 3).[5]

The Director of the Bureau of Land Management issued an opinion on June 7, 1956, holding *sua sponte* [6] that original title to the subject land was in the United States, not Louisiana, and that the tract, therefore, was public land within the meaning of the mineral leasing laws. The Director made no reference to the Government's purchase from Jurgens, or to the more than half a century during which the property had been administered as acquired land (R. 245-286). Because the parties never had been afforded an opportunity to discuss the many new issues raised by his opinion, the Director allowed 30 days during

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the land is acquired, or *vice versa*. See *The Texas Co.*, 61 I.D. 367, 371 (1954). The Court of Appeals for the District of Columbia Circuit cast doubt on the validity of this artificial distinction in *Seaton* v. *Texas Company*, 102 U.S. App. D.C. 171, 256 F. 2d 718, 724 (1958), but the Secretary still adheres to it.

[5] Petitioner Strom filed offers on public land lease forms on July 10, 1956, and October 16, 1956. Subsequently, on September 25, 1957, he filed offers on acquired land lease forms (R. 752, Fdg. 4).

[6] In his appeal, Wallis conceded that the "lands in controversy are acquired lands of the United States. . . ." (R. 98, 102.)

which comments might be submitted on the public lands question and other matters (R. 750, Fdg. 3; R. 285-86).

A year later, on June 5, 1957, the Director ordered the rejection of all the acquired lands lease offers, the rejection of Morgan's public land lease offer as to the tract in suit, and approval of Wallis' public land lease offer (R. 750, Fdg. 3, R. 407-415). Morgan then appealed this decision on the public lands lease applications to the Secretary, and further invoked the Secretary's supervisory jurisdiction on the ground that there never had been a determination of the appeal on the acquired land lease offers (R. 750-51, Fdg. 3). Wallis and Strom similarly invoked the Secretary's supervisory jurisdiction with respect to the acquired lands appeal (*Ibid.*).

Upon assuming supervisory jurisidiction, the Secretary declared that he could find no "obvious error" in the Director's determination that the subject land was public (65 I.D. 377; R. 605). Accordingly, without passing upon the matter of federal title derived from Jurgens, the Secretary concluded, "In these circumstances, I see no reason to disturb the Director's finding that the lands involved are leasable under the Mineral Leasing Act of 1920, as amended, and not under the Mineral Leasing Act for Acquired Lands." In addition to rejecting all of the acquired lands lease offers, the Secretary affirmed the Director's ruling that Wallis, and not Morgan or Strom, was entitled to a public lands lease.

Petitioners brought this suit for judicial review of the Secretary's action. The case came on for hearing in the district court on cross motions for summary judgment based upon a stipulation of the administrative record and exhibits (R. 61-746A). On February 20, 1961, the court entered findings of fact, conclusions of law and a judgment dismissing the action with prejudice (R. 748-753). On appeal, the court of appeals affirmed the judgment below.

Neither the district court nor the court of appeals passed upon the documentary evidence establishing federal title through the purchase in 1903 of the Jurgens lands to which the subject lands accreted and which the Department of the Army had administered as "acquired lands" since 1903. Indeed, both lower courts simply assumed that the Secretary is empowered to determine that the property is public land within the meaning of the mineral leasing laws, and thus overlooked the primary issue in the case. From that chain of error, this petition is prosecuted.

Reason for Granting the Writ

This case, which turns upon whether the Secretary of the Interior is empowered to classify as "public lands" a tract held by another government department as "acquired lands," presents an important and novel question in the administration of the federal mineral leasing laws.

The Mineral Leasing Act for Acquired Lands was designed to bring order out of potential chaos in the leasing of mineral lands purchased by the United States for various governmental purposes.[7] To avoid a multiplicity of inconsistent leasing procedures among the several departments having jurisdiction over such property, Congress centralized all mineral leasing authority in the Department of the Interior for all public lands and acquired lands. With respect to the leasing of acquired lands, however,

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[7] The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, *et seq.*), is the primary federal land mineral leasing law. In 1941, the Attorney General held that this statute did not extend to land purchased by the War Department for river and harbor projects and conferred no authority on the Secretary of the Interior to lease such land (40 Op. A.G. 9). Section 2 of the Acquired Lands Mineral Leasing Act (30 U.S.C. 351) defines acquired lands to include "all lands heretofore or hereafter acquired by the United States to which the 'mineral leasing laws' have not been extended * * *."

Section 3 of the Act (30 U.S.C. 352) makes mandatory "the consent of the head of the executive department, * * * having jurisdiction over the lands * * * and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered: * * *."

If, as the courts below apparently assumed, the Secretary of the Interior's classification of land as public cannot be questioned, he may wholly frustrate the objectives of the foregoing statute. In other words, by the mere expedient of ruling unilaterally that lands administered as acquired by another department in fact always belonged to the United States, the Secretary could circumvent the consent requirement in Section 3 and could also eliminate the need for adhering to any conditions which might be imposed upon use of the land by another federal official having jurisdiction over it. Uniformity in mineral leasing procedures probably would result from this practice, but "adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered" (30 U.S.C. 352) would be seriously jeopardized.

The facts in this case illustrate the threat to orderly management of federal lands posed by the opinion below. Specifically, the administrative record establishes:

> (1) that the lands in suit are accretions to lands purchased for War Department use by the United States from George Jurgens under a deed dated July 8, 1903;[8]

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[8] The chain of title and a detailed review of the Government's purchase from Jurgens are set out at R. 470-476. Initially, the United States sought to obtain patents from Louisiana (R. 501-503), but the State issued patents to Jurgens (R. 484, 486, 488). The United States then recognized Jurgens as the owner, brought condemnation proceedings naming Jurgens

(2) that the Attorney General of the United States rendered a formal opinion in 1903 approving Jurgens' title (R. 519); and

(3) that ever since 1903 the lands in suit have been administered as acquired lands under the jurisdiction of the Department of the Army for river control purposes.[9]

Such property purchased and administered by a sister agency, petitioners submit, lawfully may be leased by the Secretary of the Interior only as acquired lands.

Both the Director of the Bureau of Land Management and the Secretary, however, wholly disregarded the chain of federal title derived by purchase from Jurgens. Neither official referred to the deed from Jurgens to the United States, to the Attorney General's opinion approving Jurgen's title, or to the Department of the Army's long and continuing administration of the land in suit as acquired lands. Instead, the Secretary could find no "obvious error" in the Director's opinion, formed on the basis of materials outside the record, that the lands were public.

The Departmental approach, affirmed by the courts below, runs directly counter to the scope and intent of the

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as a defendant (R. 504), and agreed with him as to the amount of compensation (R. 510-512). Thereafter, Jurgens conveyed the land to the United States (R. 481).

[9] At least seven times during the course of this proceeding, the Corps of Engineers officially reported that the land in suit was accretion to lands purchased by the United States from George Jurgens, and was acquired land under its jurisdiction and administration for river control purposes (R. 133-155, 166-168A, 676-678A). Prior to and at the time Morgan filed his lease offers, the Department of the Interior recognized and leased, as acquired lands, the land purchased from Jurgens and accretions to that land contiguous to and indistinguishable from the land in suit (R. 720, 733, 739-744). Indeed, Wallis himself described the property in suit as "acquired lands" (R. 102), and as "accretion, reliction or dereliction to land acquired from George Jurgens * * *." (R. 80, 82, 85, 87, 89-90).

Mineral Leasing Act for Acquired Lands. The Secretary is not empowered to ignore the title by purchase,[10] and to hold that the United States never had divested itself of original title. The question before the Secretary on the pending applications was whether the property was *leasable* as acquired land or public land, not whether in his opinion the Federal Government owned the land by original title or title by purchase. And, as a matter of law, purchased land under the jurisdiction of another department is leasable only as acquired land.

The basic theme of the Mineral Leasing Act for Acquired Lands is that, without the consent of the department or agency affected, the Secretary may not lease purchased land under the jurisdiction and administration of another department, or lease acquired mineral deposits in land subject to an unsatisfied mortgage held by a Government agency. S. Rept. No. 161, 80th Cong., 1st sess. (1947); H. Rept. No. 550, *idem*. If land is purchased for the construction of dikes and jetties to control a river and is used and administered for that purpose for 50 years, that land is "acquired" within the meaning of the statute. In other words, leasing does not there depend on the view a particular Secretary of the Interior may take of the title of the Government's predecessor in interest, but rather depends upon how jurisdiction was obtained and long-standing administrative use. As previously noted, any other construction would mean that a Secretary, by the simple issuance of a new title opinion, could lease purchased or mortgaged lands for mineral purposes without regard to their proper utilization and without the consent of the department or agency most directly concerned.

In this case, the Secretary of the Army, when called upon

[10] The Secretary also is not authorized to go behind the Attorney General's opinion, which "by law bind all executive departments * * *." 37 Op. A.G. 98, 101 (1933).

for his consent to Morgan's and Wallis' acquired land offers to lease, imposed some seventeen conditions to his consent (see, e.g., R. 136, 168). These conditions, framed to prevent interference with the use for which the land in suit was acquired and administered, namely, river and harbor and flood control purposes, would hold the United States harmless from damages to the lessee's property, would bar the location of wells in certain areas and would grant other protections to the United States. But the unilateral action of the Secretary of the Interior in declaring the land public cut off the right to impose these protective conditions. Indeed, not even as a matter of comity did he inquire whether leasing to Wallis would interfere with the Army's use of the land. In such manner, therefore, the Secretary defeated the mandatory statutory requirement calling for "the consent of the head of the executive department * * * having jurisdiction over the [acquired] lands * * * to insure the adequate utilization of the land for the primary purposes for which they * * * [were] acquired or * * * administered * * *" (30 U.S.C. 352).

The action of the Secretary of the Interior in classifying as public lands for mineral leasing purposes a tract otherwise administered as acquired lands thus is in defiance of the language and overriding spirit of the Mineral Leasing Act for Acquired Lands. The prime objective of that law, while allowing mineral development, is to safeguard against disruption of administrative use and jurisdiction over purchased land. It is not concerned with the shifting title views of changing Secretaries, even assuming *arguendo* that the Attorney General's title opinion is wrong and the Secretary's is right. Congress did not intend that land owned by the United States should be "acquired" for one purpose in one agency and "public" for another purpose in another agency.

Conclusion

Statutes should not be construed, as the courts below have done, to open the door to administrative conflict and chaos. To restore balance between the powers of the Secretary of the Interior and the rights of the heads of other departments and agencies in carrying out the federal mineral leasing laws, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16367

HENRY S. MORGAN, ET AL., *Appellants*,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, ET AL., *Appellees*.

Appeal from the United States District Court for the District of Columbia

Decided July 5, 1962

Mr. Marvin J. Sonosky for appellants.

Mr. A. Donald Mileur, Attorney, Department of Justice, with whom *Assistant Attorney General Clark*, *Messrs. Roger P. Marquis* and *Ralph S. Boyd*, Attorneys, Department of Justice, were on the brief, for appellee Udall.

Mr. Harry M. Edelstein for appellee Wallis.

Messrs. Henry Glassie and *Hershel Shanks* were on the brief for appellee Nakasian.

Messrs. Philip R. Collins and *Courtney Whitney, Jr.*, entered appearances for appellee McKenna.

Before EDGERTON, WASHINGTON and DANAHER, *Circuit Judges*.

DANAHER, *Circuit Judge:* The appellants ask reversal of an order of the District Court which had granted summary judgment for the Secretary and Wallis, intervenor in whose favor the Secretary had ruled. Morgan in the original complaint, and both Morgan and Strom in an amended complaint, had sought review of the Secretary's issuance to

Wallis of a public land oil and gas lease of some 826 acres of Government-owned lands in Louisiana at the mouth of the Mississippi River. All the various parties, Wallis included, at different times had filed "public lands" lease offers under the Mineral Leasing Act of 1920, 41 STAT. 437, as amended, 30 U.S.C. §§ 181 *et seq.* (1958), as amended, 30 U.S.C. §§ 181 *et seq.* (Supp. III, 1962), each allegedly including the land for which the Secretary finally deemed Wallis to be qualified. The various parties also had filed separate lease offers on the additional theory that the lands were "acquired lands" of the United States.[1]

The Director of the Bureau of Land Management concluded that the lands in question were not and could not have been at any time "acquired lands," for the United States had never previously divested itself of title to the lands in issue, only thereafter to re-acquire them. Accordingly he ruled that the law and the regulations pertaining to *public* lands must control.

Thereupon he gave Wallis and Morgan thirty days within which to show cause and to submit briefs and evidence with respect to that ruling. Neither party responded. The Director then ruled that his decision eliminating the "acquired lands" applications had become final, the offers thereunder were deemed finally rejected, and as to those applications, the case was closed.

With an appeal from that ruling pending before the Secretary, appellant Strom many months later, in 1956, filed public land offers for the same lands, and later, in 1957, filed acquired lands offers with respect thereto. The Secretary affirmed the challenged decision of the Director.

The Secretary also rejected the Morgan public land offer on the ground that Morgan had failed to connect the metes and bounds description of unsurveyed lands with a corner of the public lands surveys. He ruled additionally that the description in the Morgan application was insuf-

[1] Purchased or acquired land may be leased under the Mineral Leasing Act for Acquired Lands of August 7, 1947, 61 STAT. 913, 30 U.S.C. §§ 351-59 (1958). And see Barash v. Seaton, 103 U.S.App.D.C. 159, 160, 256 F.2d 714, 715 (1958).

ficient under the applicable regulation[2] to identify the land. It may be noted that the regulations also provide that an offer will be rejected and will confer no priority unless it be completed in accordance with the regulations.[3]

The Secretary concluded that Wallis had filed a proper public lands lease offer which complied with the Department regulations. Thus the award went to him as the first qualified applicant,[4] for the Secretary found Strom to be junior to Wallis.

The Secretary's decision is subject to judicial review only if it can be shown that he has acted arbitrarily or unreasonably or that his interpretation of what constitutes "public lands" is erroneous as a matter of law.[5]

The Secretary had been granted authorization by the Act "to prescribe necessary and proper rules and regulations and to do any or all things necessary to carry out and accomplish the purpose of this Act . . . ."[6] His interpretation of his own regulations is of controlling weight unless it is plainly erroneous or inconsistent with the regulations.[7] It has long been established that the determination by the Secretary of a question of fact on a matter within his jurisdiction is well-nigh conclusive.[8] Here the District Court with the administrative record before it, entered findings of fact and conclusions of law supporting

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[2] 43 C.F.R. § 192.42(d) (1954) which read as applied in pertinent part: "Each offer must describe the lands by legal subdivision, section, township, and range, if the lands are surveyed, and if not surveyed, by a metes and bounds description connected with a corner of the public land surveys by course and distance and must cover only lands entirely within a six-mile square."

[3] 43 C.F.R. § 192.42(g) (1954).

[4] McKenna v. Seaton, 104 U.S.App.D.C. 50, 259 F.2d 780, *cert. denied*, 358 U.S. 835 (1958).

[5] Chapman v. Sheridan-Wyoming Co., 338 U.S. 621, 631 (1950); California Company v. Udall, 111 U.S.App.D.C. 262, 296 F.2d 384 (1961).

[6] Mineral Leasing Act of 1920 § 32, 41 STAT. 450, 30 U.S.C. § 189 (1958).

[7] Bowles v. Seminole Rock Co., 325 U.S. 410, 414 (1945); Wright v. Paine, 110 U.S.App.D.C. 100, 102, 289 F.2d 766, 768 (1961).

[8] Foster v. Seaton, 106 U.S.App.D.C. 253, 255-56, 271 F.2d 836, 838-39 (1959); Wann v. Ickes, 67 App.D.C. 291, 293, 92 F.2d 215, 217 (1937).

the Secretary's decision. In light of the record, we have considered the claims advanced by the appellants and have discerned no adequate basis upon which that determination may be disturbed.

It follows that the appellants have failed to sustain their burden of demonstrating error in the Secretary's conclusion that Wallis was the first qualified applicant and is entitled to the lease.[9] Accordingly the order of the District Court is

Affirmed.

(4344-8)

[9] Cf. Boesche v. Udall, No. 16238, D.C. Cir., Nov. 16, 1961, rehearing *en banc* denied, June 15, 1962.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR STEWART L. UDALL, SECRETARY OF THE INTERIOR, IN OPPOSITION

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MEMORANDUM FOR STEWART L. UDALL, SECRETARY OF THE INTERIOR, IN OPPOSITION

Petitioners are unsuccessful applicants for non-competitive oil and gas leases. They seek review of the decision of the Secretary of the Interior, affirmed by both courts below, which rejected their applications and issued a lease to respondent Wallis. The lands in controversy are 826 acres on the narrow banks at the mouth of the Mississippi River known as Southwest Pass, Plaquemines Parish, Louisiana

(see green area on map at R. 230A).[1] The lands were not in existence in their present form in 1836 when the only official survey of the area was made (R. 276, 664A), and came into existence thereafter "as a result of subterraneous upheavals plus accretions to the islets and mud lumps which were formed by this upheaval, accretions to the then mainland and existing islands, and to artificially constructed jetties and dikes" (R. 248).

In 1903 the State of Louisiana, which then claimed title to lands at Southwest Pass, issued a patent to certain of those lands to one George Jurgens (R. 268). Jurgens deeded the lands to the United States shortly thereafter, and it is the accretions to these Jurgens' lands which are the subject of the petitioners' applications (*ibid.*). Since that time the Jurgens' lands and the accretions to them have been used by the United States, under the administration of the Department of the Army, for river and flood control purposes (R. 606).

Commencing in 1954 petitioners and respondent Wallis filed applications for mineral leases on these lands. Each applicant filed separate applications, first pursuant to the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) which establishes the procedures for the leasing of "public lands" of the United States and second pursuant to the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 *et seq.*) which, as indicated by its title, governs the leasing of acquired lands

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[1] "R. —" refers to the printed joint appendix in the court of appeals.

(R. 602-604). In so doing each obviously sought protection against the possibility that the United States held title to the subject lands as part of the public domain rather than by purchase.[2]

After an extensive study of the issues involved, the Director of the Bureau of Land Management determined that title to the lands in question had never passed to the State of Louisiana and that they had been part of the public domain since they first came into existence (R. 249-273). On review, the Secretary of the Interior affirmed the decision of the Director and accordingly rejected all the lease applications filed pursuant to the Mineral Leasing Act for Acquired Lands (R. 605-606). Turning to the public lands lease applications, the Secretary found that the application of petitioner Morgan, first in time, was defective and granted the next complete application which was that of respondent Wallis (R. 606-615).

On cross motions for summary judgment (R. 61-64, 738),[3] the district court held that there was substantial evidence to support the Secretary's rejection of petitioner Morgan's applications and his grant of Wallis' public lands application and that the Secre-

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[2] As the application requirements under the two statutes differ, an applicant who is in doubt as to the origin of the United States' title, may file two applications, one under each statute, to insure consideration of his claim. Cf. *Seaton* v. *Texas Co.*, 256 F.2d 718 (C.A.D.C.).

[3] The administrative record before the Department of the Interior (R. 65-737) was stipulated as part of the record before the district court (R. 65).

tary was not arbitrary or capricious in reaching that decision. Accordingly, the court denied petitioners' motion for summary judgment, granted respondents' motions and dismissed the action (R. 753). On appeal the court of appeals affirmed (Pet. App. 13-16).

Petitioners' sole contention is that the Secretary of the Interior was bound to hold that the lands in issue are "acquired lands"—subject to lease under the Mineral Leasing Act for Acquired Lands—because they were "purchased by the United States in 1903 for river and flood control purposes with title approved by the Attorney General, and ever since that time continuously held for the same purposes under the jurisdiction and administration of the Department of the Army * * *" (Pet. 2).[4] Petitioners do not deny, and, therefore, we assume for purposes of this case, that the United States held title to these lands in 1954; their applications—in the pursuit of which the petition has been filed—could not possibly be granted unless the federal government has the title.[5] Their only argument, therefore, is that the

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[4] The petition raises no question concerning the Secretary's determinations, affirmed by both courts below, that the public lands lease application submitted by petitioner Morgan was defective in that the land sought to be leased was not properly identified, as required by the regulations of the Department of the Interior (see R. 606-611), and that the application of respondent Wallis was proper (R. 612-615).

[5] To the extent that the lands in issue here are islands arising in the marginal sea, petitioners do not deny, and, therefore, we assume for purposes of this case, that the decisions of this Court in *United States* v. *California*, 332 U.S. 19, and *United States* v. *Louisiana*, 339 U.S. 699, are ap-

prior purchase estopped the Secretary from making any further investigation into the true sources of federal ownership.

Both courts below properly rejected petitioners' contention. There is no conflict of decisions, and the question decided does not warrant further review. The Secretary of the Interior is charged with responsibility for administration of the mineral leasing statutes. In ruling upon claims for leases under these statutes, he must determine whether the lands in question are public domain lands or lands acquired by purchase. *McKenna* v. *Seaton*, 259 F. 2d 780 (C.A. D.C.); *Barash* v. *Seaton*, 256 F. 2d 714 (C.A. D.C.); *Seaton* v. *Texas Co.*, 256 F. 2d 718 (C.A. D.C.); see *Haley* v. *Seaton*, 281 F. 2d 620 (C.A. D.C.); *Justheim* v. *McKay*, 123 F. Supp. 560 (D. D.C.), affirmed, 229 F. 2d 29 (C.A. D.C.). The fact that various public officials in the past may have acted on the assumption that the lands in issue here were initially not a part of the public domain does not deprive the Secretary of the Interior of responsibility and authority to determine their true classification for purposes of administration of the mineral leasing statutes.[6]

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plicable to such islands. Further, the petition necessarily makes no argument that the United States, by the time of these applications, had divested itself of title to the lands in issue by means of the Submerged Lands Act of May 22, 1953 (67 Stat. 29).

[6] The mistake of previous government officials as to the correct status of these lands did not relieve the Secretary from executing the laws of Congress in accordance with the

There is no merit to petitioners' further contention that, in the circumstances of this case, the Secretary of the Interior had no authority to lease the subject land without the consent of the Department of the Army, which at one time considered it to be under its jurisdiction as acquired land. This question was neither raised nor decided before the administrative agency or the courts below. Moreover, petitioners do not have standing to raise the issue whether the Secretary's action was in violation of the rights of the Department of the Army.[7]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

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NOVEMBER 1962.

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true status of the land. *United States* v. *California*, 332 U.S. 19; *United States* v. *City and County of San Francisco*, 310 U.S. 16, 31-32; *City and County of San Francisco* v. *United States*, 223 F. 2d 737, 739 (C.A. 9), certiorari denied, 350 U.S. 903.

[7] *Frothingham* v. *Mellon*, 262 U.S. 447; *Fairchild* v. *Hughes*, 258 U.S. 126, 129.

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No. 523

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

HENRY S. MORGAN, ET AL., *Petitioners*

v.

STEWART L. UDALL, Secretary of the Interior, FLOYD A. WALLIS, ET AL., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT FLOYD A. WALLIS IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. 13-16) is reported at 306 F. 2d 799. The findings of fact and conclusions of law of the district court are found at R. 748-752.[1]

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[1] "R." refers to the printed joint appendix in the court of appeals.

JURISDICTION

The court of appeals entered judgment on July 5, 1962, and denied a timely petition for rehearing on September 12, 1962. The petition for a writ of certiorari was filed on October 15, 1962. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the decision of the Secretary of the Interior was arbitrary, unreasonable, or otherwise not in accordance with law when it held that the lands leased to respondent Wallis were public lands of the United States leasable under the Mineral Leasing Act of 1920, rather than acquired lands leasable under the Mineral Leasing Act for Acquired Lands.[2]

STATEMENT

Respondent Wallis adopts as his Statement the first five paragraphs of the memorandum for Stewart L. Udall, Secretary of the Interior, in opposition.

ARGUMENT

As the court of appeals said (Pet. 15), the Secretary's decision is subject to judicial review only "if it can be shown that he has acted arbitrarily or unreasonably or that his interpretation of what constitutes 'public lands' is erroneous as a matter of law." *Chapman* v. *Sheridan Wyoming Co.*, 338 U. S. 621, 631

[2] For our purposes, public land may be defined as land the title to which has been acquired by the United States in the extension of its sovereignty, in our case in the purchase of Louisiana from France; acquired land as land once in private ownership and then acquired by the United States. Cf. *Justheim* v. *McKay*, 123 F. Supp. 560 (D.C. D.C., 1954), aff'd 229 F. 2d 29 (C.A. D.C., 1956).

(1950); *McLennan* v. *Wilbur*, 283 U. S. 414 (1931); *Riverside Oil Co.* v. *Hitchcock*, 190 U. S. 316, 324 (1903); *California Company* v. *Udall*, 296 F. 2d 384 (C.A. D.C., 1961). Tested by this established rule, the court of appeals and the district court properly held that the Secretary's decision should not be disturbed.

The only aspect of the Secretary's decision to which the petition is addressed is his conclusion that the land involved is public land leasable under the Mineral Leasing Act of 1920, 41 Stat. 437, as amended (30 U. S. C. Sec. 181 et seq.) and not acquired land leasable under the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913; 30 U. S. C. Secs. 351 et seq.). The amended complaint contains no allegation that the Secretary's decision in this respect is arbitrary, unreasonable, or even wrong or objectionable on any ground (R. 9). Moreover, none of the facts upon which the Secretary's decision is based have ever been denied by the petitioners, in the amended complaint or otherwise.

Even though the land concededly has always been public land and has never been conveyed by the United States, petitioners argue that it became "acquired land" within the meaning of the Mineral Leasing Act for Acquired Lands *merely* because the land to which it accreted was erroneously "purchased" and was for a time erroneously "treated" as "acquired" land by officials of the United States. (Pet. 8-11.)

(1) The Mineral Leasing Act for Acquired Lands simply provides in section 2 (61 Stat. 913; 30 U.S.C. 351) that " 'Acquired Lands' or 'lands acquired by the United States' include all lands heretofore or hereafter acquired by the United States to which the 'mineral leasing laws' have not been extended * * *." And

"mineral leasing laws" are defined as including the one covering public lands, the Mineral Leasing Act of February 25, 1920, as amended (41 Stat. 437; 60 Stat. 950; 30 U.S.C. 181 *et seq.*) There is nothing in that or any other language or in the legislative history of the Mineral Leasing Act for Acquired Lands, and the petitioners cite none, which evidences an intent to regard public lands never disposed of by the United States as acquired lands merely because of erroneous actions of officials of the United States based on the assumption that they were privately owned. It is inconceivable that merely because of a transaction by which the United States actually acquired nothing, public lands should thereafter be regarded as having been acquired for any purpose or that Congress should have so intended in the absence of an explicit direction.

On the contrary, to issue an oil and gas lease of public land under the Acquired Lands Act would violate the clear and explicit provisions of the Mineral Leasing Act of February 25, 1920, as amended, and the Acquired Lands Act. For the Mineral Leasing Act covers only public land[3] and requires that oil and gas deposits therein "shall be subject to disposition in the form and manner" therein provided. (30 U.S.C. 181.) Like all other public land in Louisiana, the land here involved was acquired by the United States in the purchase of Louisiana from France. Being thus concededly public land, never disposed of by the United States, it is land to which the 1920 Act *has* been extended. And the Acquired Lands Act by its own definition covers only "lands heretofore or hereafter acquired by the United

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[3] 40 *Opp. Atty. Gen.* 9 (1941); 34 *Op. Atty. Gen.* 171 (1924); *Solicitor's Opinion on Mineral Leasing Act*, 60 I.D. 26, 27 (1947); *Justheim* v. *McKay*, 229 F. 2d 29 (C.A. D.C., 1956).

States to which the 'mineral leasing laws' [the 1920 act] *have not* been extended * * *."

There is no conceivable basis for the assertion that leasing "depends upon how jurisdiction was obtained and long standing administrative use." (Pet. 11.) Congress chose not to define the land covered by the Mineral Leasing Act for Acquired Lands in any such terms and its choice is controlling. The discussion of conditions to leasing requested by the Secretary of the Army and of his consent (Pet. 8, 10, 11) is similarly pointless if the land is public and not acquired, since Congress has provided for such conditions and consent only if the lands are acquired and leasable under the Mineral Leasing Act for Acquired Lands. Moreover, by designating the Secretary of the Interior to administer both the Mineral Leasing Act of 1920 and the Mineral Leasing Act for Acquired Lands, Congress necessarily delegated to him the responsibility for determining which of the two statutes covers the land for which a lease is sought. *Haley* v. *Seaton*, 281 F. 2d 620 (C.A. D.C., 1960); *Justheim* v. *McKay*, 123 F. Supp. 560, affirmed 229 F. 2d 29 (C.A. D.C., 1956).

(2) The petitioners' argument is analogous to the one rejected in *U.S.* v. *California*, 332 U.S. 19, 39, 40 (1947), the companion case to *U.S.* v. *Louisiana*, 339 U.S. 699 (1950). In *California*, title to the submerged coastal lands was held to be in the United States, even though action had been taken, as the court said, "undoubtedly consistent with the belief * * * on the part of some government agents at the time that California owned all, or at least a part of the three-mile belt. This belief was indicated in the substantial number of instances in which the Government acquired title from the states to lands located in the belt; some decisions of

the Department of the Interior have denied applications for Federal oil and gas leases in the California coastal belt on the ground that California owned the lands." (332 U.S. 39, 40.) Accord, *United States* v. *San Fransisco*, 310 U.S. 16, 31-32 (1940); *Utah Power & L. Co.* v. *United States*, 243 U.S. 389, 408, 409 (1917).

(3) The Attorney Generals who approved the "acquisition" of, and commenced condemnation proceedings concerning the Jurgens land (Pet. 8, fn. 8; 9; 10, fn. 10) were overruled by the later Attorney Generals who prosecuted *U. S.* v. *Louisiana* and by this Court which upheld their position in that case in 1950 (339 U. S. 699). The Secretary followed, as he was bound to follow, the decision of this Court in that case.

(4) Contrary to petitioners' statements (Pet. 7, 9), the Director, the Secretary, the district court and the court of appeals did consider and dispose of the Jurgens argument.

Whatever claim to title Jurgens had was based on conveyances to him from Louisiana. And Louisiana's claim to title rested entirely on its own law. The U.S. Attorney in his letter of January 13, 1904 to the Attorney General stated (R. 516): "The lands in question [the Jurgens land] have all been formed by accretion from the sea, and under the law of Louisiana all such accretions belong to the State." The Director expressly held that there was no proper basis for any such claim by the State and took into account the Jurgens purchase in his decision of June 7, 1956 (R. 245, 248, 268.) The Director referred in detail to the three patents from Louisiana to Jurgens and to the deed from Jurgens to the United States (R. 268), and expressly disposed of the Jurgens argument as is

clearly shown from the portions of his decision quoted below.[4]

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[4] "Accretions to * * * [the Jurgens land] are directly involved in the instant case. * * * Louisiana has claimed these and other lands and the soils beneath the marginal sea by virtue of her inherent sovereignty theory of title to the bed of the Gulf of Mexico. * * * since *United States* v. *Louisiana*, 339 U.S. 669 (1949) [1950], the only interpretation that can be given thereto is that this case does not admit of an inherent sovereign ownership of water bottoms other than inland water bottoms * * *. (R. 268, 269.)

Earlier in the same decision, the Director referred to the purchase from "a Louisiana patentee", obviously meaning Jurgens, and continued:

> "* * * the United States was the original proprietor of all lands within Louisiana by purchase from France; since *United States* v. *Louisiana*, 339 U.S. 699 (1949) [1950] decided that Louisiana did not own the bed of the marginal sea, the United States is the original proprietor of that bed. No State by legislative fiat can decree title out of the United States and declare title in herself. * * * *Absent a grant of the public lands from the United States.* * * * title has always been in the United States. Since Louisiana is a public land State, all lands therein still possessed by the United States as original proprietor are public lands * * *; the only method by which any land in a public land State, such as Louisiana, can become acquired lands is for the United States *first to completely divest itself of title to the public lands*, and later purchase the same land from private or State ownership." (R. 248, 249.)

At another point the decision continued on the same subject:

> "* * * having decided that title to all lands formed from the bed of the marginal sea in the Gulf of Mexico subsequently to 1850 was *at all times* in the United States, including accretions thereto, the conclusion is inevitable that these subsequently formed lands are 'public lands' of the United States * * *. It is axiomatic then that any lands *not conveyed by the United States* remained property of the United States as public lands; they are subject to leasing under the Mineral Leasing Act of February 25, 1920, *supra*, as amended. * * * there are no lands involved herein which are considered acquired lands." (R. 272, 273.) (Emphasis throughout this brief is supplied unless otherwise indicated.)

The Secretary agreed with the Director that the lands involved are leasable under the Mineral Leasing Act of 1920, as amended, and not under the Mineral Leasing Act for Acquired Lands and affirmed his decision (R. 602, 605, 606, 615). In doing so, he stated in part: "Thus there are now three parties before the Secretary each of whom is asserting the priority of his public land or acquired land offer. Not one of the applicants has taken a definitive position on whether the lands applied for are of the one type or the other and each is apparently willing to accept a lease under either statute.[5] Furthermore, the Director in an exhaustive and carefully reasoned decision has determined that the lands involved are leasable only as public lands." (R. 605, 606.)

The District Court made findings on "the basis of the administrative record before the Secretary." (Finding 5, R. 752.) That record of course includes the Jurgens documents to which petitioners allude. (R. 465-519). The court of appeals ruled on all of petitioners' arguments, including the one based on those documents, in stating among other things: "In light of the record, we have considered the claims advanced by the appellants and have discerned no adequate basis upon which that determination [the Secretary's decision] may be disturbed." (Pet. App. 16.) And earlier in its opinion, the court of appeals stated: "The Director of the Bureau of Land Management concluded that the lands in question were not and could not have been at any time 'acquired lands,' for the United States had never

[5] Wallis, Morgan and Strom all filed both public and acquired land offers. Hence, there is no significance in any reference to the lands as acquired lands by Wallis as an acquired land offeror. (Pet. 5, fn. 6; 9, fn. 9.)

previously divested itself of title to the lands in issue, only thereafter to re-acquire them. Accordingly he ruled that the law and regulations pertaining to *public* lands must control. * * * The Secretary affirmed the challenged decision of the Director." (Pet. App. 14.) It necessarily follows from the undisputed failure of the United States so to divest itself of title, that the reasons claimed by petitioners to require the land to be leased as "acquired" (Pets. 8, 9) are wholly meaningless.

The Secretary's decision that the land involved is public land, leasable under the Mineral Leasing Act of 1920, was not arbitrary, unreasonable, or erroneous as a matter of law. The courts below were clearly right in refusing to disturb his decision. Nothing in the petition or otherwise justifies further review.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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November, 1962.